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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/693,965
Filing Date: October 28, 2003
Appellant(s): WECHTER ET AL.

Steven Ashburn
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/02/2008 appealing from the Office action mailed 01/02/2008.

(1) Real Party in Interest

A statement identifying the real in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal: Application No. 10/375362, filed 02/28/2003.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

6,941,350	Frazier et al.	Sept. 6, 2005
20040172467	Wechter et al.	Sept. 2, 2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Frazier et al. (USPN 6941350).

5. As per claims 1 and 15, Frazier et al. teaches a method for managing a discovery-related process in a network, comprising:

identifying topology information – devices ([COL 11, lines 25-39) of the network using the discovery-related process – state machine ([FIG 8], [COL. 11 lines 24-25]) in an active mode- S1 ([FIG 8 –discovering state], [COL. 11, lines 24-27]);

placing the discovery-related process from the active mode –S1 into a standby mode – S2 using a management process – subnet manager ([COL 11, lines 49-51]);

monitoring to detect specified events – responses to requests ([COL. 11, line 55) in the network using the management process – subnet manager ([COL 11, lines 53-56] e.g., subnet manager periodically sends requests…referred to as polling) and then forward a count of the detected specified events to the discovery-related process – S4 ([FIG 8], [COL 11 lines 59-60] e.g., the claim terminology 'forwarding' is interpreted as placing into consideration. In the present case, the specified events are taken into consideration by tracking the predetermined number, i.e., count, of tries. At which point, a state change occurs. It is noted that 'specified events' are not further defined with sufficient specificity), and /or when the predetermined point in time arrives – defined time out ([COL. 11, lines 58-64]); and

placing the discovery-related process from the standby mode into the active mode ([COL 11 lines 61-64] when the count of the detected specified events exceed a threshold – pre-determined number of tries ([COL. 11, line 60] e.g., specified events are broadly interpreted as any activity operable to trigger a state change) and/or when the predetermined point in time arrives – defined time out ([COL 11, lines 58-60]).

3. As per claims 2 and 16, Frazier et al. teaches the method of claim 1, comprising:

signaling the management process – SM with higher priority [(FIG 8)] when the discovery-related process completes identification of the network's topology information – Discovery Completed ([FIG 8], [COL 12, lines 20-23])

4. As per claims 3, 11, and 17, Frazier et al. teaches the method of claim 1, wherein the discovery-related process transits from the active mode to the standby mode in an ordered sequence - S1-S2 ([FIG 8], [COL. 11, lines 66-67],[COL 12, lines 1-8]).

5. As per claims 4,12, and 18, Frazier et al. teaches the method of claim 1, comprising:

the discovery-related process identifying the network's topology information – begin discovery process ([COL. 11, lines 58-64) in response to the discovery-related process transiting from the standby mode to the active mode ([COL. 11, lines 58-64] e.g., discovery process repeated again upon a transition from the standby to discovering (active mode))

6. As per claims 5 and 19, Frazier et al. teaches the method of claim 4, wherein the discovery-related process performing identification of the network's topology information in response to the discovery-related process transiting from the standby mode to the active mode comprises:

restarting initial subprocesses – S1-S4 ([FIG 8] e.g., state machine iteratively repeats transitions from standby to discovery based on status of subnet nodes) of the discovery-related process;

providing network topology information - subnet manager packets ([COL. 12 line 1] discovered by the initial subprocesses – DISCOVERING ([FIG 8] e.g., discovering entails employing processes including device discovery, querying ports, ascertaining path delays, and

the like) to inactive subprocesses – STANDBY ([FIG 8], [COL. 12, line 4] of the discovery-related process;

the inactive subprocesses becoming active –MASTER ([FIG 8], [COL 12 e.g.,) in response to the provided network topology information – transition into discovering state ([COL. 12, line 2])

7. As per claims 6 and 20, Frazier et al. teaches the method of claim 5, wherein the initial subprocesses are restarted in an ordered sequence – S1-S4 ([FIG 8])

8. As per claims 7 and 21, Frazier et al. teaches the method of claim 4, comprising:

repeating the placing the discovery-related process from the active mode into the standby mode using the management process ([FIG 8], [COL 11, lines 49-51, 63-64] ,[COL. 12, lines e.g., begin the discovery process "again" for selecting a master subnet manager. Examiner interprets the reference as transitioning from an active to a standby state, and from a standby state to an active state based upon changing priority information –COL. 12 lines 38-47), after the discovery-related process identifying the network's topology information ([COL. 11, lines 58-64] e.g., discovery process repeated again upon a transition from the standby to discovering (active mode)) in response to the discovery-related process transiting from the standby mode to the active mode.

9. As per claims 8,13, and 22, Frazier et al. teaches the method of claim 1, wherein the discovery-related process in the standby mode compares the detected specified events to the threshold – no response /predetermined number of tries ([COL. 11, line 59]), and initiates a transition from the standby mode to the active mode when the detected specified events exceed

the threshold – transitions standby state back to discovering state based on pre-determined number of tries ([COL. 11, lines 58-64])

10. As per claim 9, Frazier et al. teaches a system for managing a discovery-related process in a network , comprising:

means for identifying topology information – devices ([COL 11, lines 25-39) of the network using the discovery-related process – state machine ([FIG 8], [COL. 11 lines 24-25]) in an active mode- S1 ([FIG 8 –discovering state], [COL. 11, lines 24-27]);

means for placing the discovery-related process from the active mode –S1 into a standby mode – S2 for detecting specified events in the network and forwarding a count of the detected specified events to the means for identifying ([COL 11, lines 49-51([FIG 8], [COL 11 lines 59-60] e.g., the claim terminology 'forwarding' is interpreted as placing into consideration. In the present case, the specified events are taken into consideration by tracking the predetermined number, i.e., count, of tries. At which point, a state change occurs. It is noted that 'specified events' are not further defined with sufficient specificity), and /or when the predetermined point in time arrives – defined time out ([COL. 11, lines 58-64])

wherein the means for identifying compares the detected specified events against a threshold ([COL 11 lines 59-60]) and shifts from the standby mode into the active mode when the count of the detected specified events exceeds the threshold, and/or shifts from the standby mode into the active mode when the arrival of the predetermined point time is detected ([COL 11 line 59] e.g., defined timeout)

11. As per claim 10, Frazier et al. teaches the method of claim 9, wherein the means for identifying – S1 ([FIG 8]) signals the means for placing, detecting, and forwarding - state

machine ([FIG 8]) when the means for identifying completes identification of the network's topology information –DISCOVERY COMPLETED ([FIG 8]).

12. As per claim 14, Frazier et al. teaches the method of claim 13, wherein the means for placing, detecting, and forwarding -state machine ([FIG 8]) shifts the means for identifying into the standby mode – S1-S2 ([FIG 8]) and the means for identifying –state machine ([FIG 8]) initiates a shift into the active mode –S1 when the detected specified events exceed the threshold – pre-determined number ([COL. 11, lines 58-64]) in a repeating cycle – transition from standby to discovering to begin process "again" ([COL. 11, lines 59-64], [FIG 8])

Claim Rejections - 35 USC § 102

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Wechter et al. (USPN 20040172467)

14. As per claim 23, Wechter et al. teaches a method for managing a discovery-related process in a network comprising:

receiving topology information of the network from a discovery-related process in an active mode ([ABSTRACT] – discovery of topology);

placing the discovery –related process from an active mode into a standby mode ([0017 lines 6-8] e.g., time since last discovery operation implies that an active mode, upon completion, will fall into a standbye mode);

monitoring the network to detect changes with respect to the received topology information ([0007 lines 4-8] e.g., detecting network changes);

accumulating a count of the detected changes in the network ([0016 lines 4-6]);

periodically forwarding the count to the discovery related process ([0018 lines 1-7] - intervals);

placing the discovery related process from the standby mode into the active mode when the count exceeds a threshold and/or when a predetermined point in time arrives ([0018 lines 1-7] triggering of re-discovery module)

(10) Response to Argument

In response to argument (A) Rejection of Claims 1-22 Under Section 102(e) over Frazier, the Examiner respectfully disagrees. The following discussion addresses the Examiner's claim construction, interpretation, and application of the pertinent prior art.

Appellant's claim terminology provides a method which "monitors to detect specified events in the network using the management process and forwarding a count of the detected events to the discovery-related process**,** AND/**OR** monitoring to detect arrival of a predetermined point in time." Examiner asserts that the claim construction provides either forwarding a count to the discovery related process, monitoring to detect the arrival of a predetermined point in time, or both.

Appellant's arguments primarily address the first portion of the claim terminology to conclude Frazier fails to anticipate each and every element while failing to address the latter

portion of the claim terminology. Clearly, the 'OR' statement provides that either the first portion or the second portion of the claim terminology may be utilized in anticipating independent claim 1.

a) With regard to 'monitoring to detect arrival of a predetermined point in time,' it is interpreted that a predetermined point in time corresponds to either a defined time out and/or a predetermined number of retries.

In support, appellant's instant specification does not expressly define time. Rather, appellant describes that a predetermined point in time can coincide with an expiration of a time period, relate to a scheduled occurrence, or relate to a point in time at which a user or administrator desires rediscovery to occur or commence (e.g., appellant's specification, paragraph 0013)

In the present case, Frazier teaches transitioning from a standby state S2 back to a discovering state S1 if the master subnet manager does not respond within a defined time out or after a predetermined number of retries ([COL 11 lines 49-63]) Frazier monitors the arrival of a predetermined point in time by detecting the expiration a defined time out and/or a predetermined number of retires prior to effectuating a state transition from a standby mode to a discovery state S1. Since a predetermined point in time, in light of Appellant's instant specification, is reasonably interpreted as one of a defined time out or a predetermined number of retires, it is Examiner's contention that Frazier monitors the arrival of a predetermined point in time (e.g., time out and/or number of retries)

b) With regard to the former portion of the claim terminology, Frazier teaches "monitoring to detect specified events in the network using the management process and forwarding a count of the detected events to the discovery process."

When interpreting a claim, the Examiner has latitude to reasonably interpret the claim in light of the specification. During examination, the claims must be interpreted as broadly as their terms reasonably allow (M.P.E.P. § 2111.01 [R-5], 8th Edition, Revision 6 (Sept. 2007).)

Appellant's instant specification describes *forwarding* in the context of *reporting* a specified network event to the discovery related process (e.g., 'forwarding or reporting'). The Examiner has therefore interpreted forwarding in the context of reporting. Dictionary.com Unabridged (v 1.1) defines 'reporting' as submitting or relating results. Furthermore, 'forward' is also defined as putting into consideration. The interpretation of forwarding, when viewed in light of reporting, is reasonably interpreted as putting into consideration (e.g., submitting or relating a result). In effect, based on appellant's instant specification, if a value is submitted to a discovery related process, it reported/forwarded. The Examiner alleges that submitting a value (e.g., reporting) would require the discovery related process to take into consideration the value.

In the present case, Frazier teaches detecting specified network events, i.e., responses to polls and/or a predefined timeout ([COL 11 lines 53-65]). When a count value of the predetermined number of retries is exceeded, a state change occurs ([COL 11 lines 53-65]). The state machine ([FIG 8]) uses the count value (e.g., number of retries) to effectuate a state change. In using the count value to effectuate a state change, it is necessary that the state machine receive the count. In other words, the count (e.g., number of retries) is reported (e.g., taken into consideration) by the state machine (e.g., reported). In sum, the number of retries represents a

detected network event, a count of the retries is accumulated, and the state machine receives (e.g., reported/forwarded/considered) the count value to effectuate a state change.

Appellant's argue Examiner's interpretation of "forwarding" is inconsistent, is unsupported, inconsistent with the plain meaning of the term, and inconsistent with the interpretation that would be given to the term by an artisan in light of appellant's specification. The Examiner respectfully disagrees with Appellant. Examiner's interpretation of forwarding is constrained by reporting to illustrate that when a value is received by state machine, it was necessary that an entity report that value (e.g., forwarding /placing a value into consideration)

(2) Appellant argues with respect to claims 9-22 are patentable under Section 102(e) for the same reasons presented in argument (A). For the reasons set forth in Examiner's response to argument (A), the Examiner respectfully disagrees.

(3) In response to argument (B), the Examiner respectfully disagrees. Furthermore, the Examiner asserts that Wechter et al. is equally applicable to claims 1-22.

Wechter et al. is a method and system for monitoring a network. The method includes detecting changes in the network, monitoring the topology when a number of detected changes exceed a threshold and/or initiating discovery of the topology when a predetermined period of time expires.

Wechter et al. teaches a rediscovery check module that is employed at periodic intervals to check the count of changes or delta events in the network (e.g., 0018) Wechter et al. teaches a discovery interval module that can trigger itself at the end of a predetermined or configurable

time period, time interval, or at a specific, configurable point in time (e.g., 0020) Wechter et al. further teaches that a current count of network changes (e.g., M_ChangeThreshold) can indicate a threshold number of detected changes above which the rediscovery module can enable or initiate a network topology discovery operation (e.g., 0022)

Appellant argues that Wechter et al. fails to disclose that a rediscovery check module is placed from a standby mode into an active mode when a count exceeds a threshold and/or when a predetermined point in time arrives. In stark contrast to Appellant's arguments, Wechter et al. teaches the rediscovery check module can trigger itself at periodic intervals (e.g., triggering initiates an active discovery, i.e., active mode) Also, Wechter et al. can enable the rediscovery check module to initiate discovery upon the detecting a threshold number of network events (e.g., placing the module from a standby mode, i.e., not discovering, to an active mode, i.e., discovering)

In the present case, Wechter et al. teaches that 1) the module is triggered at periodic intervals and/or 2) enabled after a threshold number of network changes is detected to initiate discovery of the network topology.

First, periodic triggering of the module implies that a period of active discovery occurs upon being triggered (e.g., at periodic intervals delta events in the network are checked against a threshold, i.e., active mode, paragraph 18.) During this period, the module is in an active, discovery mode. When the module is not triggered, the module is not actively checking delta events in the network against a threshold (e.g., the module is in a standby mode until otherwise triggered).

Second, upon receiving either a trigger or an indication that a threshold has been reached, the module is enabled or initiated to begin discovery of the network topology. When the module is enabled (e.g., active mode), a discovery operation is initiated. Absent an indication of a change in a threshold count, the module is in a standby mode until the module is triggered to initiate discovery of network topology. In support, Wechter et al. expressly teaches "enabling or initiating a discovery operation" upon receiving an "indication of a threshold number of network changes." ([0022 –lines 1-10]) Absent an indication that the threshold has been reached, the module is in a standby mode until the threshold is reached, upon which the module will enter into an active mode to begin discovery of the topology.

Appellant's argument that Wechter et al. fails to teach a standby mode appears to assume that the module is still in the active mode despite the fact the module has not been enabled or initiated to begin a discovery operation. The Examiner asserts that the module is in a standby mode until the module receives an indication of a threshold, at which point the module is initiated to begin discovery of the network topology. When the module is not enabled, it is waiting for a threshold change to occur (e.g., standby mode). When the module receives an indication that the threshold has been reached, it is enabled to begin a discovery operation (e.g., active mode).

The Examiner respectfully asserts that Wechter et al. teaches the limitations of independent claim 23.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, the Examiner respectfully requests the Board to affirm Examiner's rejection.

Respectfully submitted,

Darrin Dunn

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